

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CLAUDE RANGER III,
Appellant.

No. 2 CA-CR 2015-0468
Filed December 27, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20113403001
The Honorable Paul E. Tang, Judge

AFFIRMED IN PART; VACATED AND REMANDED IN PART

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Amy M. Thorson, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By Abigail Jensen, Assistant Public Defender, Tucson
Counsel for Appellant

STATE v. RANGER
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Appellant Claude Ranger III challenges the sentence imposed on his conviction for aggravated assault. He contends the trial court wrongfully sentenced him based on statutes that were not effective on the date of his offense. Because we conclude his sentence for aggravated assault was unlawful, we vacate that sentence and remand the case for resentencing on that count. We otherwise affirm his convictions and sentences.

¶2 “We view the facts in the light most favorable to sustaining the jury’s verdicts.” *State v. Felix*, 234 Ariz. 118, ¶ 2, 317 P.3d 1185, 1186 (App. 2014). On April 28, 1993, Ranger sexually assaulted a ninety-three-year-old woman, causing fractures to her face, serious bruising, and vaginal tearing. A jury found him guilty of aggravated assault causing serious physical injury and sexual assault.

¶3 The trial court sentenced Ranger to consecutive terms of imprisonment, the longer of which was a life sentence without the possibility of release for twenty-five years on the sexual assault count. As to the aggravated assault conviction, the court determined Ranger had multiple prior convictions and sentenced him as a repetitive offender pursuant to former A.R.S. § 13-604(D), imposing a twenty-five year prison term.

¶4 For the first time on appeal, Ranger contends his sentence on the aggravated assault count was illegal. Because he did not object below, we review for fundamental error. *See State v.*

STATE v. RANGER
Decision of the Court

Henderson, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005).¹ An illegal sentence, however, constitutes fundamental error. *See State v. Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 910 (App. 2013).

¶5 Ranger first argues the trial court erred in sentencing him because the statute allowing for the twenty-five year sentence did not become effective until January 1994. 1993 Ariz. Sess. Laws, ch. 255, §§ 7, 10, 12. The state concedes, and we agree, that a twenty-year sentence was the maximum available sentence for the crime committed in 1993.

¶6 Ranger also contends, however, that his sentence was illegal because former § 13-604(K) required the “trier of fact” to determine whether a defendant had previous convictions for sentencing as a repetitive offender. The state argues that although former § 13-604(K) required the “trier of fact” to find prior convictions, it was amended in 1996 to allow the trial court to make such findings. 1996 Ariz. Sess. Laws (2d Reg. Sess.), ch. 34, § 1. And it asserts, this is a procedural criminal statute, which may be applied retroactively without violating ex post facto principles. We need not, however, determine whether the court erred because no reasonable juror would have failed to find the priors alleged on the evidence presented, and therefore Ranger has not established prejudice. *See State v. Ruggiero*, 211 Ariz. 262, ¶ 27, 120 P.3d 690, 696 (App. 2005).

¶7 Therefore, because we conclude the sentence imposed on the aggravated assault conviction was illegal under the sentencing statutes effective at the date of the offense, we vacate the

¹Citing *State v. Vermuele*, Ranger suggests his claim was not forfeited and fundamental error review should not apply. 226 Ariz. 399, 249 P.3d 1099 (App. 2011). Unlike the situation in *Vermuele*, however, Ranger did have the opportunity to raise this issue in the trial court before sentencing. The parties submitted sentencing memoranda on the 1993 sentencing statutes and the range ultimately employed by the trial court was included in the pre-sentence report.

STATE v. RANGER
Decision of the Court

sentence on that count and remand the matter for resentencing. Ranger's convictions and remaining sentence are affirmed.